IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.9.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.811 of 2007

Anitha .. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The Commissioner of Police
Greater Chennai, Egmore
Chennai - 600 008. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.K.S.Ganesh Babu
For Respondents : Mr.P.Kumaresan
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Sebastin alias Seba, son of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2. Challenging the abovesaid detention, the mother of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records of the detention order No.318/2006, dated 8.12.2006 passed by the second respondent, to quash the same and to direct the respondents to produce the detenu, now confined in Central Prison, Puzhal before this Court and to set him at liberty.

3. The order of detention dated 8.12.2006 came to be passed based on the ground case said to have taken place on 5.11.2006 at about 7.00 p.m., when one David, plumber, was returning home after his work, the detenu and Manimaran came near David, caught hold of his shirt and threatened him asking what was in his pocket. The detenu took a knife and threatened to kill him and voluntarily inserted his hand into the shirt pocket of David and took away Rs.900/-. Manimaran removed the gold ring from David. When the detenu and his associate tried to escape, David raised hue and cry. Noticing the rushing of the public the detenu and his associate threatened to kill them, they picked up stones from the roadside and pelted the same against the public. The public ran hither and thither for safer places out of fear of danger to their lives and properties. The traffic was disrupted. However, the public surrounded the detenu and his associate and apprehended them on the spot and they were taken to V4, Rajamangalam Police Station. Based on the complaint lodged by David, a case was registered in Crime No.649 of 2006 under Sections 341, 392 and 506(2) IPC on the file of V4, Rajamangalam Police Station.

4. The second respondent, taking note of the above case as a ground case and finding that there are 8 adverse cases pending against the detenu, having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

5. The main contention of Mr.K.Ganesh Babu, learned counsel for the petitioner is that the detention of the detenu was not communicated to his family members.

6. The learned Additional Public Prosecutor invited out attention to the requisition for remand dated 16.11.2006 wherein it is stated that the family members of the detenu have been informed about the detention of the detenu. To substantiate the same, the learned Additional Public Prosecutor invited our attention to the arrest memo, where the receipt for sending telegram was found inserted.

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7. We have perused the materials available on record and given careful consideration to the submissions of both sides.

8. A perusal of the records, in particular, the arrest memo reveals that the receipt for sending telegram has been inserted in it. Neither the contents of the telegram, nor the address to which the telegram was sent were produced before this Court. A mere receipt for sending telegram without producing the contents or the address to which it was sent will not be a substantial evidence to prove that the family members of the detenu were informed about the detention of the detenu and his place of detention.

9. The object and purpose of informing the members of the detenu's household in writing of the passing of the order of detention and taking in custody of the detenu as also the place of detention immediately after the detenu is taken in custody pursuant to the order, is that the family members of the detenu should not be kept in darkness by withholding the information about the passing of the order of detention and the place of detention thereby preventing them from having any access and from rendering any help or assistance to the detenu and similarly the detenu should not be deprived of the privilege of meeting his relations and getting any help or assistance, vide Union of India v. Vasanbharathi, [1990] 2 SCC 275.

10. In the case on hand, no material was produced before us to justify that the family members of the detenu have been informed about the detention of the detenu and his place of detention. If that be so, the order of detention is vitiated. This petition must succeed and the same is ordered as prayed for. The detention order dated 8.12.2006 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

sasi

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

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2. The Commissioner of Police
   Greater Chennai, Egmore
   Chennai - 600 008.

3. The Public Prosecutor
   High Court, Madras.

4. The Superintendent,
   Central Prison,
   puzhal, Chennai.

5. The Joint Secretary to Government,
   Public (Law & Order)
   Fort Saint George,
   Chennai-600 009.

LA(CO)
dcp/5.10

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